

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KHALEEL ALI HILLIARD,)	
)	
Petitioner,)	
)	
v.)	1:08CV870
)	1:06CR156-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Khaleel Ali Hilliard, a federal prisoner, has filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Criminal Case, Docket No. 40.) In that motion he alleges a single claim of ineffective assistance of counsel which states that counsel miscommunicated a plea offer from the government, causing him to initially reject the plea offer. He did later plead guilty, but the delay in entering the plea cost him one additional level of reduction in his sentencing range that he could have received for timely acceptance of responsibility. As relief, Petitioner seeks resentencing, with the one additional level of reduction being taken into account.

In response to the § 2255 motion, Respondent concedes that the alleged error occurred and that Petitioner can show by a preponderance of the evidence that the error did cost him the additional level of reduction. Therefore, Respondent has no objection to Petitioner being resentenced. It states that it will also move for the additional level of reduction at the resentencing.

IS THEREFORE RECOMMENDED that Petitioner's motion to vacate, set aside, or correct sentence (Docket No. 40) be granted, that counsel be appointed, and that he be resentenced according to Respondent's concession.

/s/ Donald P. Dietrich
Donald P. Dietrich
United States Magistrate Judge

July 13, 2009